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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Lasalle Investments LLC,

10 Plaintiff,

11 v.

12 Estate of Michael Gordon Lindsay, et al.,

13 Defendants.
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No. CV-22-00148-TUC-RCC

ORDER

15 Pending before the Court is Plaintiff Lasalle Investments LLC's Motion to Remand
16 to State Court. (Doc. 5.) This matter is fully briefed. (Docs. 5, 7–8.)

17 **I. Factual and Procedural History**

18 On December 1, 2021, Plaintiff filed a Complaint in Pima County Superior Court
19 against Michael Gordon Lindsay ("Decedent"), Debora Lindsay, and the Estate of Michael
20 Gordon Lindsay. (Doc. 1-3 at 3.) Plaintiff alleged that Decedent's negligence resulted in
21 the crash landing of Plaintiff's airplane in Arizona in August 2020. (*Id.*) Decedent died
22 shortly after the incident in Tucson, Arizona, although it is not alleged that his death was
23 related to the crash. (*Id.* at 4.) The Complaint states, "Michael Gordon Lindsay, Decedent,
24 and Defendant herein, was married to Debora Lindsay. Defendants, Mr. and Mrs. Lindsay,
25 were residents of North Carolina at the time of the accident occurring in Cochise County
26 Airport, Arizona." (*Id.*)

27 On March 28, 2022, Defendants Debora Lindsay, Michael Gordon Lindsay, and the
28 Estate of Michael Gordon Lindsay removed this action to federal court. (Doc. 1.) Plaintiff

1 filed a Motion to Remand on April 19, 2022 arguing that this Court lacks subject matter
2 jurisdiction to hear the case because there is not complete diversity between the parties.
3 (Doc. 5.) Specifically, Plaintiff argues Decedent was a citizen of Arizona at the time of his
4 death, which thereby defeats diversity because Plaintiff is also a citizen of Arizona as an
5 Arizona corporation. (*Id.*)

6 In the Motion to Remand, Plaintiff states that, at the time of his death, Decedent was
7 "a resident" of Cochise County and was issued an Arizona driver's license reflecting this
8 residence. (*Id.* at 1.) According to Plaintiff, Decedent had also expressed his intent to
9 remain in Arizona and not return to North Carolina, despite his wife living in North
10 Carolina. (*Id.* at 4.) Plaintiff provides the affidavit of Yolanda Noriega, who vows to have
11 known Decedent for fifteen years prior to his death, and who states that Decedent
12 "expressed to [Noriega] on numerous occasions over the five years prior to his death that
13 he did not plan to return to North Carolina and that he was a resident and would not move
14 from the State of Arizona." (*Id.* at 7.) Noriega further avows that Decedent held himself
15 out to be "a citizen" of Arizona and confirmed that Decedent used an Arizona driver's
16 license for at least three years before he died. (*Id.*)

17 Defendants respond that, according to Plaintiff's Complaint, Decedent "was a
18 resident of North Carolina at the time of the incident out of which Plaintiff's claim arises."
19 (Doc. 7 at 1.) Thus, Decedent's North Carolina citizenship, according to Defendants, is
20 supported by the pleadings. (*Id.*)

21 In reply, Plaintiff distinguishes citizenship from residency and argues that Plaintiff's
22 Complaint never alleged that Decedent was a *citizen* of North Carolina. (Doc. 8 at 1.) In
23 fact, the Complaint states, "Defendants, Mr. and Mrs. Lindsay, were residents of North
24 Carolina at the time of the accident occurring in Cochise County Airport, Arizona." (Doc.
25 1-3 at 4.)

26 **II. Standard of Review**

27 The Court has diversity jurisdiction over a civil action "where the matter in
28 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is
between . . . citizens of different States[.]" 28 U.S.C. § 1332(a). A case may only be

1 removed to federal court where there is complete diversity such that the citizenship of each
2 plaintiff is different from that of each defendant. *See id.*; *Hunter v. Phillip Morris USA*,
3 582 F.3d 1039, 1043 (9th Cir. 2009).

4 The relevant inquiry for diversity jurisdiction purposes is the state of citizenship. *Id.*
5 “[A] corporation is a citizen only of (1) the state where its principal place of business is
6 located, and (2) the state in which it is incorporated.” 28 U.S.C. § 1332(c)(1). An
7 individual’s state of citizenship is determined by their domicile, not merely their residence.
8 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). “A person residing in a
9 given state is not necessarily domiciled there, and thus is not necessarily a citizen of that
10 state.” *Id.* (citing *Weible v. United States*, 244 F.2d 158, 163 (9th Cir. 1957)).

11 Thus, a person’s domicile is their place of permanent physical residence where that
12 person resides with the *intent* to remain. *Lew v. Moss*, 797 F.2d 747, 749–50 (9th Cir.
13 1986); *see also Weible*, 244 F.2d at 163 (“Residence is physical, whereas domicile is
14 generally a compound of physical presence plus an intention to make a certain definite
15 place one’s permanent abode, though, to be sure, domicile often hangs on the slender thread
16 of intent alone, as for instance where one is a wanderer over the earth. Residence is not an
17 immutable condition of domicile.”).

18 The party seeking removal bears the burden of establishing jurisdiction. *Kanter v.*
19 *Warner-Lambert Co.*, 265 F.3d 853, 858 (9th Cir. 2001).

20 **III. Discussion**

21 Here, the Court finds that Defendants have not established jurisdiction. Decedent is
22 a named Defendant in this matter as is his estate. Therefore, it is Decedent’s state of
23 citizenship that is relevant to whether this Court has diversity jurisdiction. *See* 28 U.S.C. §
24 1332(c)(2) (“[T]he legal representative of the estate of a decedent shall be deemed to be a
25 citizen only of the same State as the decedent”); *Li Ching Chu v. Tribal Techs. Inc.*,
26 576 F. App’x 668, 669 (9th Cir. 2014); *Cunningham v. World Sav. Bank, FSB*, No. 3:07–
27 cv–08033 JWS, 2007 WL 4181838, at *3 (D. Ariz. Nov. 21, 2007); *King v. Cessa Aircraft*
28 *Co.*, 505 F.3d 1160, 1170 (11th Cir. 2007) (“Where an estate is a party, the citizenship that
counts for diversity purposes is that of the decedent, and she is deemed to be a citizen of

1 the state in which she was domiciled at the time of her death."). Furthermore, all parties
2 appear to agree that Decedent's state of citizenship is the relevant focus. (*See Docs. 5, 7*
3 (*presenting argument as to whether Decedent was a citizen of Arizona or North Carolina*).)

4 The Court finds that Decedent was a citizen of Arizona at the time of his death
5 because he was domiciled in Arizona. It appears that Decedent lived at his residence in
6 Arizona and was using a state driver's license reflecting that address for at least three years
7 prior to his death. According to Noriega's sworn statement, Decedent had also long
8 expressed his intent to remain in Arizona before he died at a hospital in Arizona.
9 Defendants have not presented any argument or information to refute these facts.
10 Defendants cannot carry their burden of establishing jurisdiction merely by relying on
11 Plaintiff's statement that Decedent was a resident of North Carolina because residency is
12 not equal to domicile or citizenship. Therefore, the Court will grant the motion to remand
13 for lack of complete diversity among the parties.

14 **IV. Motion to Supplement**

15 Plaintiff also moves to supplement the Motion to Remand. (Doc. 8 at 2.) Defendants
16 did not respond to this motion, and the time for response has since passed. *See LRCiv*
17 *7.2(c)*.

18 Plaintiff would like to supplement the Motion to Remand with the information that
19 a plane owned by Decedent, unrelated to the accident that occurred in Cochise County, was
20 sold by the executrix of the estate on March 16, 2022. (Doc. 8 at 2.) The initial inventory
21 of the property in the pending Swain County, North Carolina probate proceedings was
22 never amended. (*Id.*) Plaintiff asserts that the registration of the plane is relevant to both
23 the Swain County probate proceedings and the action filed in Pima County Superior Court,
24 which Defendants have removed to this Court. (*Id.* at 3.) According to Plaintiff, the failure
25 to account for this plane, and any assets received in the sale of the plane, may require the
26 state court complaint to be amended. (*Id.*)

27 Because the Court will remand this matter to Pima County Superior Court for lack
28 of diversity, it will not consider whether information regarding the sale of Decedent's plane
by his estate requires amendment of the Complaint.

1 **V. Conclusion**

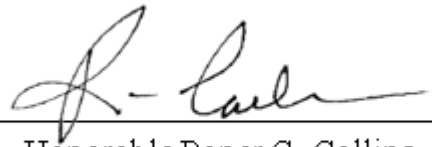
2 For the reasons outlined above, the Court finds that there is not complete diversity
3 of citizenship between Plaintiff and all Defendants. Accordingly,

4 **IT IS ORDERED** that Plaintiff's Motion to Remand is **GRANTED**. (Doc. 5.) This
5 matter is remanded to Pima County Superior Court. The Clerk of Court shall close this case
6 and docket accordingly.

7 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Supplement is **DENIED**
8 **AS MOOT**. (Doc. 8.)

9 Dated this 27th day of June, 2022.

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Honorable Raner C. Collins
Senior United States District Judge